

(5) not later than January 1, 2007, file with the appropriate committees of the senate and the house of representatives for consideration by the 80th Legislature a report that describes the actions taken by the Texas Youth Commission, the Texas Juvenile Probation Commission, and health and human services agencies to implement the best practices recommended by the work group.

SECTION 9. This Act takes effect September 1, 2005.

Passed the Senate on April 21, 2005: Yeas 31, Nays 0; passed the House on May 25, 2005, by a non-record vote.

Approved June 17, 2005.

Effective September 1, 2005.

CHAPTER 699

S.B. No. 335

AN ACT

relating to the recording of electronic documents.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Title 3, Property Code, is amended by adding Chapter 15 to read as follows:

CHAPTER 15. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

Sec. 15.001. *SHORT TITLE.* This chapter may be cited as the Uniform Real Property Electronic Recording Act.

Sec. 15.002. *DEFINITIONS.* In this chapter:

- (1) "Document" means information that is:
 - (A) inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and
 - (B) eligible to be recorded in the real property records maintained by a county clerk.
- (2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (3) "Electronic document" means a document that is received by a county clerk in an electronic form.
- (4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.
- (5) "Paper document" means a document that is received by a county clerk in a form that is not electronic.

Sec. 15.003. *UNIFORMITY OF APPLICATION AND CONSTRUCTION.* In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law substantially similar to this chapter.

Sec. 15.004. *VALIDITY OF ELECTRONIC DOCUMENTS.* (a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document that complies with the requirements of this chapter.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to

be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

Sec. 15.005. RECORDING OF DOCUMENTS. (a) A county clerk who implements any of the functions described by this section shall act in compliance with rules adopted by the Texas State Library and Archives Commission under Chapter 195, Local Government Code, and standards established by the Texas State Library and Archives Commission under Section 15.006.

(b) A county clerk may:

- (1) receive, index, store, archive, and transmit electronic documents;
 - (2) provide for access to, and for search and retrieval of, documents and information by electronic means;
 - (3) convert paper documents accepted for recording into electronic form;
 - (4) convert into electronic form information recorded before the county clerk began to record electronic documents;
 - (5) accept electronically any fee or tax that the county clerk is authorized to collect; and
 - (6) agree with other officials of a state, a political subdivision of a state, or the United States on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.
- (c) A county clerk who accepts electronic documents for recording shall:

- (1) continue to accept paper documents; and
- (2) place entries for paper documents and electronic documents in the same index.

Sec. 15.006. UNIFORM STANDARDS. (a) The Texas State Library and Archives Commission by rule shall adopt standards to implement this chapter.

(b) To keep the standards and practices of county clerks in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact a law that is substantially similar to this chapter and to keep the technology used by county clerks in this state compatible with technology used by recording offices in other jurisdictions that enact a law that is substantially similar to this chapter, the Texas State Library and Archives Commission, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing standards shall consider:

- (1) standards and practices of other jurisdictions;
- (2) the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association;
- (3) the views of interested persons and governmental officials and entities; and
- (4) the needs of counties of varying size, population, and resources.

Sec. 15.007. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

Sec. 15.008. CONSTRUCTION WITH OTHER LAW. Except as otherwise provided by this chapter, Chapter 195, Local Government Code, and the rules adopted by the Texas State Library and Archives Commission under that chapter apply to electronic documents filed in accordance with this chapter.

SECTION 2. Section 191.009, Local Government Code, is amended to read as follows:

Sec. 191.009. ELECTRONIC FILING AND RECORDING. (a) A county clerk may accept electronic documents and other instruments by electronic filing and record the electronic documents and other instruments electronically if the filing or recording complies with the rules adopted by the Texas State Library and Archives Commission under Chapter 195. ~~[Such an instrument is an electronic record, as defined by Section 43.002, Business & Commerce Code.]~~

(b) An *electronic document or other instrument* that is filed electronically in compliance with the rules adopted under Chapter 195 is considered to have been filed in compliance with any law relating to the filing of instruments with a county clerk.

(c) For purposes of this section:

(1) an *instrument* is an *electronic record*, as defined by Section 43.002, Business & Commerce Code; and

(2) "*electronic document*" has the meaning assigned by Section 15.002, Property Code.

SECTION 3. Section 195.001, Local Government Code, is amended by adding Subdivision (3) to read as follows:

(3) "*Electronic document*" has the meaning assigned by Section 15.002, Property Code.

SECTION 4. Sections 195.002 through 195.007 and Section 195.009, Local Government Code, are amended to read as follows:

Sec. 195.002. ADOPTION OF RULES. (a) The commission shall adopt rules by which a county clerk may accept *electronic documents and other instruments* by electronic filing and record *electronic documents and other instruments* electronically under Section 191.009.

(b) The rules must provide for:

(1) the electronic filing with and recording by the county clerk of:

(A) real property records; and

(B) except for records maintained under Section 192.006, other instruments filed with and recorded by the county clerk as determined by the commission;

(2) the means by which an *electronic document or other instrument* may be electronically transmitted to a county clerk for filing;

(3) the means by which a county clerk may electronically record an *electronic document or other instrument* filed electronically;

(4) requiring that the means adopted under Subdivision (2) or (3) be generally available, nonproprietary technology; and

(5) security standards to prevent the filing and recording of fraudulent *electronic documents or other instruments* or alteration of *electronic documents or other instruments* that were previously filed and recorded electronically.

(c) Rules adopted by the commission under this section that permit the use of digital signatures in the electronic filing of *electronic documents or other instruments* with the county clerk must be, to the extent practicable, consistent with rules governing digital signatures adopted by the Department of Information Resources under Section 2054.060, Government Code, ~~as added by Chapter 528, Acts of the 75th Legislature, Regular Session, 1997~~.

(d) Before adopting or amending a rule under this section, the commission shall consider the recommendations of the Electronic Recording Advisory Committee established under Section 195.008.

(e) Notwithstanding Sections 43.017 and 43.018, Business & Commerce Code, a county clerk may accept any filed electronic record, as defined by Section 43.002, Business & Commerce Code, or *electronic document* and may electronically record that *electronic document or record* if the filing and recording of that *electronic document or record* complies with rules adopted by the commission under this section.

Sec. 195.003. PERSONS AUTHORIZED TO FILE ELECTRONICALLY. The following persons may file *electronic documents or other documents* electronically for recording with a county clerk that accepts electronic filing and recording under this chapter:

(1) an attorney licensed in this state;

(2) a bank, savings and loan association, savings bank, or credit union doing business under laws of the United States or this state;

(3) a federally chartered lending institution, a federal government-sponsored entity, an instrumentality of the federal government, or a person approved as a mortgagee by the United States to make federally insured loans;

- (4) a person licensed to make regulated loans in this state;
- (5) a title insurance company or title insurance agent licensed to do business in this state; or
- (6) an agency of this state.

Sec. 195.004. NOTICE OF CONFIRMATION. (a) A county clerk that accepts electronic filing and recording under this chapter shall confirm or reject an electronic filing of an *electronic document or other* instrument not later than the first business day after the date the *electronic document or other* [an] instrument is filed. Notice under this section must be made:

- (1) by electronic means if possible; or
- (2) if notice under Subdivision (1) is not possible, by telephone or electronic facsimile machine.

(b) If the county clerk fails to provide notice of rejection within the time provided by Subsection (a), the *electronic document or other* instrument is considered accepted for filing and may not subsequently be rejected.

Sec. 195.005. TIME *ELECTRONIC DOCUMENT OR OTHER* INSTRUMENT CONSIDERED FILED OR RECORDED. An *electronic document or other* instrument that is recorded electronically under this chapter is considered to be recorded in compliance with a law relating to the recording of *electronic documents or other* instruments as of the county clerk's business day on which the *electronic document or other* instrument is filed electronically. An *electronic document or other* instrument filed electronically under this chapter must be recorded as timely as an instrument filed by any other means.

Sec. 195.006. ADDITIONAL FEE PROHIBITED. The fee to file or record an *electronic document or other* instrument electronically under this chapter is the same as the fee for filing or recording the instrument by other means, and a county clerk may not charge an additional fee for filing or recording an *electronic document or other* instrument electronically under this chapter.

Sec. 195.007. ACCESS TO *ELECTRONIC DOCUMENT OR OTHER* INSTRUMENT RECORDED ELECTRONICALLY. (a) An *electronic document or other* instrument filed or recorded electronically must be available for public inspection in the same manner and at the same time as an instrument filed or recorded by other means.

(b) The county clerk shall provide a requestor, as defined by Section 552.003, Government Code, of an *electronic document or other* instrument filed or recorded electronically under this chapter with electronic copies of the *electronic document or other* instrument in a form that is capable of being processed by the use of technology that is generally available and nonproprietary in nature. The county clerk shall provide the copies to the requestor at the cost of producing the copies in accordance with Section 552.262, Government Code.

Sec. 195.009. FILING. For purposes of this chapter, an *electronic document or other* instrument is filed with the county clerk when it is received by the county clerk, unless the county clerk rejects the filing within the time and manner provided by this chapter and rules adopted under this chapter.

SECTION 5. (a) The change in law made by this Act applies only to a document that is filed for recording on or after the effective date of this Act. A document that is filed for recording before the effective date of this Act is covered by the law in effect at the time the document was filed, and that law is continued in effect for that purpose.

(b) A rule adopted before the effective date of this Act by the Texas State Library and Archives Commission under Chapter 195, Local Government Code, applies to an electronic document filed for recording in accordance with Chapter 15, Property Code, as added by this Act, on or after the effective date of this Act.

SECTION 6. This Act takes effect September 1, 2005.

Passed the Senate on March 17, 2005: Yeas 30, Nays 0; passed the House on May 23, 2005, by a non-record vote.

Approved June 17, 2005.

Effective September 1, 2005.